IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3650 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINODBHAI RAMJIBHAI TAHKKER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3650 of 2001
MS SUBHADRA G PATEL for Petitioner No. 1
MR S.S.PATEL, APP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Palanpur, vide order dated March 5, 2001 (Annexure-A to the

petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 5, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act as four cases under the prohibition Act are registered against the petitioner which are still pending for trial. Besides this, statements of two witnesses are recorded and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms Subhadra Patel, learned advocate for the petitioner has restricted her arguments to the fact that detaining authority has not supplied the statement of all the witnesses recorded under Section 161 of the Code of Criminal Procedure ('Code' for short), therefore, subjective satisfaction recording by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. Besides this, she also contended that the statements of two witnesses for unregistered offences which were recorded by the police officer were not verified by the detaining authority himself and therefore, the privilege claimed by the detaining authority on the basis of the endorsement made by verifying officer was not genuine and, continued detention of the detenu is illegal. On the aforesaid premises she prayed to allow the petition by quashing and setting the order impugned aside and set the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP appearing on behalf of the respondent State has opposed the petition. He, however, does not dispute the factual aspects about non-verification of the statements of witnesses of unregistered offences by the detaining authority himself. Therefore, on this ground order of detention can be said to be vitiated. So far as the contention with regard to non-supply of copies of the statements of witnesses recorded under Section 161 of the Code is concerned, he

submitted that they were not placed before the detaining authority, as they were not considered to be relevant for the purpose of passing the order of detention, therefore, they were not supplied to the detenu. Hence on this ground order of detention cannot be held to be invalid. He further contended that each ground is separate, therefore, detenu has to satisfy how each ground of the detention is vitiated and unless detenu satisfies it, petition cannot be allowed. He, therefore, prayed to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition as well as the documents annexed therewith and the impugned order and the judgements cited at bar.

7. A similar question arose before the Division Bench of this Court in the case of JAKIRBHAI RAHIMBHAI NAGORI VS. COMMISSIONER OF POLICE MEHSANA & OTHERS 1996 (1) GLH 300 wherein the Superintendent of Police who examined the statements at the instance of detaining authority wrote below every statement one word 'verified' and it was held by this Court that claim of privilege made by the detaining authority on the basis of such endorsement was not genuine and the continued detention was held to be illegal.

8. Applying the said principles to the facts of the present case, it is seen that the statements of two witnesses in an unregistered offence were recorded by the Police Inspector LCB (Crime), Palanpur on February 12, 2001 and were verified on February 15, 2001 by the Deputy Superintendent of Police, Palanpur and on the basis of the statements verified by Deputy Superintendent of Police, the detaining authority has passed the order of detention, therefore, subjective satisfaction recorded by the detaining authority cannot be called proper and genuine and therefore, detention order stands vitiated and petition deserves to be allowed on this count alone.

9. So far as the 4 cases under Prohibition Act registered against the petitioner are concerned, statements of witnesses recorded under Section 161 of the Code were not placed before the detaining authority and therefore the subjective satisfaction stands vitiated.

10. In the case of JEEVA VEIYAPURI MADRASI V. COMMISSIONER OF POLICE, AHMEDABAD AND ANOTHER-1991 (GLH) 346, a Division Bench of this Court has observed that in the affidavit-in-reply it has been stated that statements

of witnesses recorded by the investigating agency were not considered to be relevant or material for the purpose of being satisfied that the petitioner whose name is very much disclosed in the FIR itself, was involved in the nefarious activities which were found to be prejudicial to the maintenance of 'public order'. Without looking at the statements the detaining authority cannot say whether they are irrelevant or otherwise. Therefore, that part of the statement made by the detaining authority cannot be accepted. It was incumbent upon the detaining authority to consider the statements recorded under S. 161 of the Code by the police during the investigation of the offences for which the charge-sheets were already placed before him. In absence of the said statements the satisfaction arrived at by the detaining authority is vitiated and therefore the whole order of detention is vitiated.

11. In view of the aforesaid ratio laid down by the Division Bench of this Court, there is no manner of doubt that the present petitioner is detained on the basis of four cases under Prohibition Act registered against him and in the said cases statements under Section 161 of the Code were recorded by the investigating officer but were not placed before the detaining authority. Therefore, ratio laid down by this court in the aforesaid judgement squarely covers the facts of the present case. Therefore, on this ground also order of detention is vitiated.

12. Seen in the above context, on both the above grounds the order of detention passed against the petitioner/detenu is vulnerable, bad in the eyes of law and is liable to be quashed and set aside by allowing the petition.

13. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 5, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*